

Date: 7/14/2017

City of Beaverton

Request for Proposal
Your City Newsletter Graphic Design
Services
Solicitation #3248-18B

DATE & TIME PROPOSALS ARE DUE:
July 21, 2017 at 2:00 PM

SUBMIT PROPOSAL BY EMAIL TO: Nicole Walters, Marketing Manager,
publicinformation@BeavertonOregon.gov

This document is available in alternate formats, such as large print, audiotape, oral presentation and electronic format. To request an alternate format, call the City of Beaverton at 503-526-2228 or TDD 503-526-2506.



TABLE OF CONTENTS

<u>SUBJECT MATTER</u>	<u>PAGE</u>
SECTION 1: INTRODUCTION & BACKGROUND	3
A. INTRODUCTION	3
B. BACKGROUND	3
SECTION 2: SCOPE OF WORK/ PROJECT SPECIFICATIONS	3
SECTION 3: PROPOSAL FORMAT & CONTENT	4
A. PROPOSAL FORMAT	4
B. SUBSTANTIVE REQUIREMENTS OF THE PROPOSAL	4
SECTION 4: PROPOSAL EVALUATION PROCEDURES	6
A. EVALUATION CRITERIA	6
B. CLARIFICATION OF PROPOSALS	7
C. AWARD RECOMMENDATION	7
SECTION 5: GENERAL INFORMATION	7
A. PROCUREMENT TIMELINE	7
B. PROCUREMENT METHOD	7
C. PROPOSAL SUBMITTAL	8
D. INTERPRETATIONS AND ADDENDA	8
G. BUSINESS LICENSE/TAXPAYER ID NUMBER	8
H. CONTRACT ADMINISTRATOR	8
I. FORM OF CONTRACT	9
J. TERM OF CONTRACT & AVAILABILITY OF FUNDS	9
K. PUBLIC RECORDS	9
M. NONDISCRIMINATION	10
N. COST OF PREPARING PROPOSALS	10
O. PROPOSAL VALIDITY PERIOD	10
P. COMMITMENT TO SUSTAINABILITY	10
Q. RESERVATION OF RIGHTS	10
SECTION 6: SIGNATURE PAGE	12
SECTION 7 - ATTESTATION of COMPLIANCE with TAX LAWS	15
Attachment A - Personal Service Contract (Sample)	16

SECTION 1: INTRODUCTION & BACKGROUND

A. INTRODUCTION

The City of Beaverton is soliciting bids for graphic design services for *Your City*, the city's 16-page newsletter.

B. BACKGROUND

Your City newsletter is one of the city's primary communication tools with the community. The publication is mailed bimonthly to 65,000 households in Beaverton and posted on the city website. Content includes upcoming events, city priorities, news on development projects, etc.

Content and photos for each issue will be provided by city staff. The graphic designer will place content and work with staff to edit and finalize the design file, including providing print-ready PDFs. Printing and mailing is contracted to an outside firm and not part of the scope of this project.

SECTION 2: SCOPE OF WORK/ PROJECT SPECIFICATIONS

Interested proposers should submit a scope of work including the following:

1. Estimated hours and cost for graphic design for eight 16-page issues of *Your City*, including three rounds of edits and packaging files for each.
2. Cost for 25 hours of additional graphic design services as needed, including inserts for *Your City* and other marketing materials for the city.
3. Hourly rates and any additional fees, including cost for providing original files, rush charges, etc.

The selected vendor will provide the city with original design files after every issue of *Your City* and any other design projects conducted under this contract.

Design work will comply with city branding guidelines, including official colors, logo placement, and fonts. City will provide selected vendor with branding manual and other guidelines.

Proposers should also submit up to five (5) examples of other similar projects. Work samples will be considered in the evaluation process.

SECTION 3: PROPOSAL FORMAT & CONTENT

A. PROPOSAL FORMAT

The City's proposal format is set out below. These are intended to facilitate the City's ability to quickly and accurately evaluate proposals.

1. Title Page

Include a title page with the submitted proposal. Include the following information on the title page: (1) the RFP Title; (2) the name, title, address, telephone number, email address of proposer's primary contact person; (3) and the date of submission. Proposers may include other information on the title page in addition to the listed information, but not in lieu thereof.

2. Transmittal Letter

Include a transmittal letter with the proposal, not exceeding two (2) pages in length. The letter should identify by name and contact information the one person proposer wishes the city to contact after proposals have been evaluated, scored and ranked. The letter may include any other information or insights the proposer deems relevant, but in no instance may the letter exceed two pages in length.

3. Table of Contents

Include a table of contents with the submitted proposal. All material items comprising the proposal should be clearly identified and able to be easily located.

4. Signature Page & Attestation of Compliance with Tax Laws

The Proposer must sign and submit the Signature Page and Attestation of Compliance with Tax Laws (see Section 6 & 7 of this RFP). The submission and signing of the signature page indicates the intention of the Proposer to adhere to the provisions described in this RFP.

B. SUBSTANTIVE REQUIREMENTS OF THE PROPOSAL

The following information is requested to allow the City to evaluate Proposer responsibility and responsiveness to perform work described under the "Scope of Work" heading (see Section 2). If a contract is awarded, City shall award the contract to the responsible Proposer whose proposal it determines in writing to be the most advantageous to the City based on the evaluation process and evaluation factors described in this RFP, any applicable preferences described in ORS 279A.120 and 279A.125 and, when applicable, the outcome of any negotiations authorized by the RFP. Other factors may not be used in the evaluation.

Your written proposal should include at a minimum the following information:

1. Experience – 20 points

Provide a description of the firm's experience in graphic design that address the key elements of the proposed scope of work (see section 2). Proposer must have experience in graphic design projects that addresses the key elements listed above. Include dates of past projects and who on the project team has direct involvement in the project. Proposers should have demonstrated experience with similar projects, particularly for government clients.

2. Proposer Qualifications – 20 points

Interested firms must submit statements of qualifications including the following:

- Background of the firm. Include a brief history of the firm and types of services the firm is qualified to perform.
- Qualifications of the firm in performing this type of work. Provide a minimum of 3 examples of related experience and references for similar projects in the last 5 years. Consultant may submit illustrative samples of past projects. Include the contact name(s), address, and telephone number for each reference.
- Project team and their individual qualifications. Identify individuals and sub-consultants (if any) who will complete this work, their experience and their individual qualifications.
- Proposals shall identify the primary contact person that will serve as the contract manager with responsibility to insure the success of the contract and include the relevant qualifications and experience of the individual. Include a resume.

3. Project Approach & Understanding – 20 points

Interested firms must submit statements of project approach and understanding of the scope of services required for the project plus any refinements your firm feels are warranted. Highlight any innovative ideas consultant may have to reduce costs or produce a better product.

- Describe your expectations of the city in this project.

3.1.5 Minority, Women, Service Disabled Veteran, Emerging Small Business (M/W/SDV/ESB)

Program – 10 points

The City is dedicated to increasing opportunities for enterprises that have been certified by the State of Oregon, through COBID, as a minority-owned enterprise (MBE), women-owned business enterprise (WBE), service-disabled veteran-owned business enterprise (SDV), or an emerging small business (ESB) (collectively known as MWSDV and ESB). A directory of these state-certified firms is available at www.oregon4biz.com/certification. The City would like to achieve a 10 percent MWSDV and ESB participation in its overall dollar amount of contracting and purchasing activities. In evaluating proposals, the City will consider firms who will be able to help the City achieve this goal. Therefore, the proposal shall address the following:

- Is your firm currently certified in the State of Oregon as an MBE/WBE/SDV or ESB enterprise? If yes, indicate all certification types and your firm's certification number(s). (3 points)
- Provide a narrative description of your firm's experience, including any innovative or successful measures, promoting MWSDV and ESB enterprises as partners, subcontractors, or suppliers on previous projects. (1 point)
- Provide a list and percentage of total contract dollars spent with MWSDV and ESB enterprises with which the proposer's firm has had a contractual relationship during the last 12 months. (2 points)
- Describe the actions the proposer will take to include MWSDV and ESB enterprise participation on this project. Of the subcontractors identified in Section 4.3.1.3, specify which subcontractors are MBE, WBE, SDV or ESB enterprises and what certification they hold, if any. (2 points)

- State the participation goal the proposer believes it can realistically achieve on this project for each MBE, WBE SDV, or ESB enterprise identified above. A percentage level is preferred. (2 points)

4. Time Requirements – 15 points

Demonstrate a practical approach to meeting the city's specific deadlines by providing detailed information as to how the firm proposes to meet the timelines and reporting deadline requirements of the project.

5. Cost – 15 points

Provide a detailed project budget for the graphic design services. Please state assumptions clearly. Please include hourly rates for all services, any additional fees or charges, and a breakdown of costs by the items listed in the scope in section 2.

Cost increase for additional years of contract:

The Cost schedule submitted with proposal shall remain in effect throughout the first year of the agreement. For the second and third year of the agreement, if extended, the billing rate for each position listed on the Cost Schedule shall be adjusted on July 1 of each year. The adjustment shall be based on the increase or decrease of the United States Bureau of Labor Statistics' Consumer Price Index for all Urban Wage Earners and Clerical Workers (CPI-W), US City Average, or its successor report issued by the Federal Government covering the change for the year ending in April as follows:

- The second term (if contract extended) July 1, 2018, to June 30, 2019, adjusted for the CPI-W US City Average Percent Change year ending April 2018.
- The third term (if contract extended) July 1, 2019, to June 30, 2020, adjusted for the CPI-W US City Average Percent Change year ending April 2019.

For the second, third year of the agreement, a revised Cost Schedule shall be submitted to Terry Muralt, Purchasing Agent, at tmuralt@beavertonoregon.gov. The City may, at its sole discretion, accept or reject any proposed change in cost schedule beyond the scope of adjustments described in this section.

6. Additional Services

Provide a brief description of any other services that your firm could provide the city and an approximation of the hourly charge for each service of this type. Such services would be contracted for on an "as needed" basis, to be provided and billed for separately.

SECTION 4: PROPOSAL EVALUATION PROCEDURES

A. EVALUATION CRITERIA

A selection committee consisting of city staff with relevant expertise in the subject matter of this solicitation will review submitted proposals. Committee members will evaluate proposals to determine which one best meets the needs of the City. Evaluation will be based on the following described criteria not just price. **Award will be made to the highest ranking consultant.**

All submittals will be evaluated on the completeness and quality of the content. Only those Proposer's providing complete information as required will be considered for evaluation. The ability to follow these instructions demonstrates attention to detail.

<u>EVALUATION CRITERIA</u>	<u>MAXIMUM POINTS</u>
1. Experience	20
2. Qualifications	20
3. Project Approach & Understanding	20
4. M/W/SDV/ESB Program	10
5. Demonstrated capability to meet the City's time requirements.	15
6. Cost	15
Maximum Total Points	100

B. CLARIFICATION OF PROPOSALS

The City reserves the right to obtain clarification of any point in a firm's proposal or to obtain additional information necessary to properly evaluate a particular proposal, but will not, in any way, provide an opportunity to change any fee amount originally proposed. Failure of a Proposer to respond to such a request for additional information or clarification could result in rejection of the firm's proposal.

C. AWARD RECOMMENDATION

Award will be made to the responsible offer or whose proposal best meets the needs of the city as set forth herein.

SECTION 5: GENERAL INFORMATION

A. PROCUREMENT TIMELINE

The City reserves the right to modify this schedule at the City's discretion. Proper notification of changes will be made to all interested parties.

	<u>Date & Time</u>
Release of Proposals	Friday, July 14, 2n017
Deadline for Submission of Proposals	2:00 PM on Friday, July 21, 2017
Evaluation Process	Monday, July 24, 2017
Commencement of Services	Friday, August 4, 2017

B. PROCUREMENT METHOD

The City is conducting this RFP pursuant to ORS 279A.050 and Beaverton Purchasing Code section 46-0100. The City seeks proposals that will enable the City to determine which service provider and solution will best meet the City's needs. The City expects this RFP will result in a single a contract with a single vendor.

C. PROPOSAL SUBMITTAL

1. Submit proposals by email to publicinformation@BeavertonOregon.gov **Proposals must be signed and submitted no later than 2:00 PM on Friday, July 21, 2017**, to the email address above. The submission and signing of a proposal shall indicate the intention of the contractor to adhere to the provisions described in this Request for Proposal (RFP).
2. Proposals should include the Section 6 & 7 completely filled out and signed.
3. It is the Proposer's responsibility to ensure that proposals are received on or before the stated closing time. Proposals received after the designated time will not be considered. There will be no formal opening.

D. INTERPRETATIONS AND ADDENDA

All questions regarding this project proposal shall be directed to Nicole Walters, Marketing Manager, at 503-526-3738 or publicinformation@BeavertonOregon.gov. If necessary, interpretations or clarifications in response to such questions will be made by issuance of an addendum to all prospective Proposers within a reasonable time prior to proposal closing, but in no case less than 72 hours before the proposal closing. If an addendum is necessary after that time, the city, at its discretion, can extend the closing date.

Any addendum issued as a result of any change in the RFP must be acknowledged on the "Signature Page" with proposal.

Only questions answered by formal written addenda are binding. Oral and other interpretations or clarifications are without legal effect.

G. BUSINESS LICENSE/TAXPAYER ID NUMBER

A Proposer awarded a contract shall obtain a City business license as required by Beaverton Code section 7.01 prior to beginning work under this contract and must pay all fees due under the Business License Law during the term of the contract.

A Proposer awarded a contract shall complete an IRS Form W-9 for the City and provide the City with either the Proposer's Social Security Number or federal taxpayer ID number. This number is requested pursuant to BPC 47-0636 of the Beaverton Purchasing Code (Resolution 3917, as amended). Social Security numbers provided pursuant to this requirement will be used for the administration of state, federal and local tax laws.

H. CONTRACT ADMINISTRATOR

The Contract Administrator will be Nicole Walters who can be reached by telephone at 503-526-3738 or by email at nwalters@BeavertonOregon.gov.

I. FORM OF CONTRACT

A copy of the standard Personal Service contract which the City expects the successful firm or individual to execute is included as Attachment "A". The contract will incorporate the terms and conditions from this RFP document and the submitted proposal. **Proposers taking exception to any of the contract terms or conditions must submit a request for a change standard contract terms and conditions WITH THEIR PROPOSAL, or the exceptions will be deemed waived.** The City Attorney will review all requests for changes and may or may not accept the requested exceptions. The City is hereby expressly authorized to engage in serial negotiation of the excepted contract terms pursuant to BPC 47-0261(H).

J. TERM OF CONTRACT & AVAILABILITY OF FUNDS

A contract awarded as a result of this RFP is expected to commence on or about August 4, 2017 and end on or before June 30, 2018, with an annual option to renew for two additional years for a total term of three years. Any contract awarded pursuant to the RFP that has a term of more than one year must include a non-appropriation clause. Continuation or extension of the contract after the end of the fiscal period in which the contract takes effect shall be contingent upon a new appropriation for each succeeding fiscal period. If sufficient funds are not provided in future City Council-approved budgets of City (or from applicable federal, state, or other sources) to permit City in the exercise of its reasonable administrative discretion to continue the contract, City may terminate the contract without further liability by giving Proposer reasonable notice.

K. PUBLIC RECORDS

All proposals and all protests shall become the property of the city and a public record, subject to public disclosure as provided under Oregon's Public Records Law. During the evaluation and selection process, city shall treat proposals as exempt from public inspection. The city shall treat all protests as exempt from public inspection until the protest is finally resolved or the period ends. After the selection process is completed and notice of intent to award a contract has issued, city shall treat proposals as open to public inspection, unless exempt from public inspection by provision of applicable state or federal law.

If it is necessary to submit trade secrets or other confidential information in order to comply with the terms and conditions of this RFP, Proposers shall label any information that it wishes to protect from disclosure to third parties as a trade secret under ORS 192.501(2) with the following: **"This material constitutes a trade secret under ORS 192.501(2) and is not to be disclosed except as required by law."** Each page containing the trade secret or other confidential information must be so marked.

The City shall take reasonable measures to hold in confidence all such labeled information, but shall not be liable for release of any information when required by law or court order to do so, whether pursuant to the Oregon Public Records Law or otherwise and shall also be immune from liability for disclosure or release of information under the circumstances set out in ORS 646.473(3).

In submitting a proposal, each proposer agrees that the city may; (a) reveal any trade secret or other confidential materials contained in the proposal to city staff and to any outside consultant or third party who is hired by the city and (b) post the proposal on the city's intranet for purposes related to its evaluation and ranking. Furthermore, each proposer agrees to indemnify and hold harmless the city

and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the proposer has designated as a trade secret and/or as confidential information. Any proposer that designates its entire proposal as a trade secret may be disqualified.

L. AVAILABILITY OF FUNDS

City has sufficient funds currently available and authorized for expenditure to finance costs of this Contract within City's current fiscal period; provided, however, that continuation or extension of the Contract after the end of the fiscal period in which this Contract is written is contingent upon a new appropriation for each succeeding fiscal period. If sufficient funds are not provided in future City Council-approved budgets of City (or from applicable federal, state, or other sources) to permit City in the exercise of its reasonable administrative discretion to continue this Contract, or if City abolishes the program for which benefit this Contract was executed, City may terminate this Contract without further liability by giving Contractor not less than 30 days' notice. In determining the availability of funds, City may use the annual budget adopted for it by its City Council.

M. NONDISCRIMINATION

The consultant agrees that, in performing the work called for by this proposal, consultant shall comply with all federal, state and local civil rights and rehabilitation laws prohibiting discrimination because of race, sex, national origin, religion, age or disability, and shall comply with all applicable provisions of ORS 279C.500 through 279C.565.

N. COST OF PREPARING PROPOSALS

All costs incurred in preparing and submitting a proposal in response to the RFP is the responsibility of the Proposer and shall not be reimbursed by Agency.

O. PROPOSAL VALIDITY PERIOD

Each proposal shall be irrevocable for a period of seventy (60) days from the Proposal Opening Date.

P. COMMITMENT TO SUSTAINABILITY

In an effort to promote greater use of recycled and environmentally preferable products and to minimize waste, the City encourages all proposals submitted in hard copy be prepared simply and economically. The use of special bindings, unnecessary colored displays and irrelevant promotional materials is neither required nor desired. Double-sided printing on recycled paper and/or the use of reusable products is preferred.

Q. RESERVATION OF RIGHTS

City reserves all rights regarding the RFP, including, without limitation, the right to:

- a. Amend, delay or cancel the RFP without liability if City finds it is in the best interest of the City to do so (see generally ORS 279B.100);
- b. Reject any or all proposals received upon finding that it is in the best interest of the City to do so (see generally ORS 279B.100);
- c. Waive any minor informality or non-conformance with the provisions or procedures of the RFP, and seek clarification of any proposal, if required;

- d. Reject any proposal that fails substantially to comply with all prescribed RFP procedures and requirements;
- e. Negotiate a Statement of Work based on the Scope of Work described herein and to negotiate separately in any manner necessary to serve the best interest of the public;
- f. Amend any Contracts that are a result of the RFP; and
- g. Engage consultants by selection or procurement independent of the RFP process or any Contracts or agreements under it to perform the same or similar services.

SECTION 6: SIGNATURE PAGE

[FILL OUT AND SUBMIT THIS PAGE WITH YOUR PROPOSAL]

This page must be signed with the full name and address of the Proposer submitting the response; if a partnership, by a member of the firm with the name and address of each member; if a corporation, by an authorized officer thereof in the corporate name.

The undersigned verifies that he/she is a duly authorized officer of the company, and that his/her signature attests that information provided in response to this Request for Proposal Solicitation #3248-18B is accurate.

The undersigned certifies that the proposal has been arrived at independently and has been submitted without any collusion designed to limit competition.

The undersigned certifies that all addenda to the specifications have been received and duly considered and that all cost adjustments associated with the addenda are reflected in this proposal.

Addendum No(s)._____ Acknowledged? ☐ YES / ☐ NO

Resident Proposer as defined in ORS 279A.120(1)?* ☐ YES / ☐ NO

Proposers certify non-discrimination in accordance with ORS 279A.110(4). ☐ YES / ☐ NO

If awarded a contract pursuant to this solicitation, will Proposer
Participate in Intergovernmental Permissive Cooperative Purchasing (extend the
terms, conditions and prices of such contract to other public agencies)?
If no, please explain on a separate piece of paper.

☐ YES / ☐ NO

Is your firm currently certified in the State of Oregon as an M/W/SDV/ESB enterprise? If so, what
Certifications do you hold and provide certification number. _____

☐ YES / ☐ NO

Proposer hereby makes this proposal to furnish goods and services at the price(s) indicated herein in fulfillment of the requirements and specifications of the City as stated in the Request for Proposal.

Signature of Authorized Official

Date

Printed Name

Telephone Number (with area code)

Title

E-mail Address

Firm

City of Beaverton Business License No.

Address

*"Resident Proposer" means a proposer that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the proposal whether the proposer is a resident proposer.

SECTION 7 - ATTESTATION of COMPLIANCE with TAX LAWS

[COMPLETE AND SUBMIT THIS PAGE WITH YOUR BID OR PROPOSAL]

I, _____, representing _____
Insert printed name Insert name of firm

(Bidder/Proposer), hereby attest that:

1. I am an authorized agent of Bidder/Proposer, and I have full authority from Bidder/Proposer to submit this attestation and accept the responsibilities stated herein.
2. I have knowledge regarding payment of taxes of Bidder/Proposer, and to the best of my knowledge, Bidder/Proposer is not in violation of any Oregon tax laws, including, without limitation, ORS 305.620 and ORS chapters 316, 317 and 318.
3. Bidder/Proposer shall provide written notice to City within two business days of any change to its compliance with tax laws.

Authorized Agent Signature

Date

Approved as to Form, Beaverton City Attorney – 04/04/2016

Attachment A - Personal Service Contract (Sample)

City of Beaverton

Personal Services Contract 3248-18

To Provide Personal Services Relating to Description
YOUR CITY NEWSLETTER GRAPHIC DESIGN SERVICES

THIS CONTRACT FOR PERSONAL SERVICES ("Contract") is between the City of Beaverton, Oregon, located at 12725 SW Millikan Way, P.O. Box 4755, Beaverton, Oregon, 97076 ("City") and Contractor's Name, located at Contractor's Address ("Contractor"), collectively known as the "Parties" and each individually as a "Party." City's primary supervisor for this Contract ("Contract Administrator") is Nicole Walters, Marketing Manager, Mayor's Office, Public Information.

The Parties agree as follows:

1. **Effective Date; Term.** The Contract shall become effective on the date last signed by a Party and approved by City's legal counsel. Unless terminated or extended, the Contract expires when City accepts Contractor's completed performance or on Month Day, 20XX, whichever date occurs first ("Term"). The City may extend the contract up to two additional years for a total term not to exceed three years.
2. **Statement of Work.** Contractor shall perform the services as scheduled ("Work") in accordance with the terms and conditions of the Contract, and as set forth in Contractor's proposal dated Month Day, 20XX, attached as Exhibit A, and incorporated into the Contract by this reference.
3. **Contract Documents.** In the event of a conflict between or among the terms of this instrument, any proposal, or request for proposal, the following order of precedence shall prevail: (a) this instrument, (b) the request for proposal, and (c) the proposal. Nothing in the Contract shall be considered an acceptance of the terms of a proposal if the terms of the proposal conflict or are otherwise incompatible with the express terms in the Contract or in City's request for proposal.

City's Request for Proposal, dated July 14, 2017 is attached as Exhibit B, and incorporated in the Contract by this reference (*Attach RFP if Contract results from RFP solicitation*).

4. **Payment.** City shall pay Contractor ☐ the sum of \$_____ or at the hourly rate of \$_____ for satisfactory accomplishment of the Work required by the Contract. The **MAXIMUM, NOT-TO-EXCEED AMOUNT** of compensation payable to Contractor under the Contract, which includes any allowable expenses or reimbursement, is \$_____.
5. **Billing and Payment Schedule.**
 - a. At least thirty days prior to the due date of payment, Contractor shall prepare and submit an invoice of services rendered to:

**THE CITY OF BEAVERTON, ATTENTION: NICOLE WALTERS, MARKETING
MANAGER, MAYOR'S OFFICE, PUBLIC INFORMATION P.O. BOX 4755,
BEAVERTON, OREGON 97076.**
 - b. City shall pay Contractor after the Contract Administrator approves and accepts Contractor's completed Work. Contract Administrator shall subsequently submit a payment request to City's Finance Department for processing.
 - c. If the Contract specifies an end product, City may withhold an amount up to 10 percent of the total sum of money to be paid until all required Work is completed and accepted.

- d. If charges are made for services performed and those charges are to be paid from grant funds, the services shall related directly to the grant from which the funds are expended.
- e. City may pay Contractor interim payments for partial completion of tasks or services only if City provides prior written authorization. An interim payment shall release City from any further obligation for payment to Contractor for Work performed or expenses incurred as of the date of the invoice of services rendered.

6. Representations and Warranties. Contractor represents and warrants to City that:

- a. If Contractor is an entity, Contractor is duly organized, validly existing, and in good standing under the laws of the State it is incorporated, and is duly qualified and authorized to do business and is in good standing in all States where it is required to be qualified and authorized.
- b. Contractor has the legal power and authority to:
 - i. Transact the business in which Contractor is engaged and presently proposes to engage; and
 - ii. Execute, deliver, and perform the Contract.
- c. Contractor has taken all necessary action to authorize the execution, delivery, and performance of the Contract.
- d. Contractor has duly executed and delivered the Contract.
- e. The execution, delivery, and performance of the Contract do not:
 - i. Contravene any applicable provision of any law, statute, rule, or regulation, or any order, writ, injunction, or decree of any court or governmental entity,
 - ii. Conflict with or result in any breach of any agreement to which Contractor is a party, or
 - iii. Violate any provision of any organizational documents of Contractor, if Contractor is any entity.
- f. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery, and performance by Contractor of the Contract, other than those that have already been obtained.
- g. When executed and delivered, the Contract shall constitute the legal, valid, and binding obligation of Contractor, enforceable in accordance with its terms, except to the extent that the enforceability may be limited by equitable principles and by bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally.
- h. The person who signs the Contract on behalf of Contractor:
 - i. is duly authorized to execute the Contract,
 - ii. has authority and knowledge regarding Contractor's payment of taxes, and
 - iii. to the best of the person's knowledge, Contractor is not in violation of any Oregon tax laws.
- i. Contractor has complied with all state and local tax laws, including but not limited to ORS 305.620, and ORS 316, 317, and 318.
- j. Contractor is not subject to backup withholding because Contractor is exempt from backup withholding, Contractor has not been notified by the Internal Revenue Service (IRS) that

Contractor is subject to backup withholding, or the IRS has notified Contractor that Contractor is no longer subject to backup withholding.

- k. Contractor shall, at all times during the Term of the Contract, be duly licensed to perform the Work. If there is no licensing requirement for Contractor's profession or for the Work to be performed, then Contractor shall be duly qualified and competent.
- l. If Contractor performs personal services under the Contract, Contractor shall perform the Work in a good and workmanlike manner.
- m. If Contractor provides professional services under the Contract, Contractor shall perform the Work in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care, skill, and diligence ordinarily exercised by members of the profession currently practicing under similar conditions.
- n. The warranties as to the standard of care set forth in subsection (l) and (m) are in addition to, and not in lieu of, any other warranties provided.

7. Subcontractors; Key Personnel.

- a. **Subcontractor Usage.** Contractor shall use the subcontractors identified in its proposals. Contractor shall not change subcontractor assignments without the prior written consent of City's Purchasing Agent.
- b. **MWSDV and ESB Subcontractors.**
 - i. City shall enforce all state-certified Minority Owned (MBE), Women Owned (WBE), Service-Disabled Veteran Owned (SDV), and Emerging Small Business (ESB), collectively known as MWSDV and ESB, subcontracting commitments submitted by Contractor in its proposals.
 - ii. If Contractor subcontracts with a state-certified MBE, WBE, SDV, or ESB, in whole or in part, because of the subcontractor's status as an MBE, WBE, SDV, or ESB, then Contractor shall require in its subcontract that the subcontractor remain certified throughout the Term of the Contract.
 - iii. Contractor shall terminate the subcontract if the state-certified subcontractor fails to remain certified throughout the Term of the Contract. Contractor shall then replace the terminated subcontractor with another state-certified subcontractor after receiving prior written consent from City's Purchasing Agent.
- c. **Subcontractor Payment Reporting Required.** Contractor shall submit a Monthly Subcontractor Payment and Utilization Report ("MUR"), made part of the Contract by reference. The MUR shall report all subcontractors employed in the performance of this Contract. An electronic copy of the MUR may be obtained by contacting the Purchasing Agent or at www.BeavertonOregon.gov/Purchasing.
- d. **Key Personnel.** If Work is awarded to an individual or a team, the key personnel identified in the proposal shall perform Work on the Contract in the role and at the level of involvement identified in the proposal. Key personnel for this Contract are: **List all key personnel for the project** (N/A if left blank). Contractor shall not substitute a key personnel member on a particular project without the prior written consent of City, which shall not be unreasonably withheld.

8. Availability of Funds.

- a. City has sufficient funds currently available and authorized for expenditure to finance costs of the Contract within City's current fiscal period. However, City may terminate the Contract without further liability if (i) sufficient funds are not provided in future City Council-approved

budgets of City or from applicable federal, state, or other sources to permit City in the exercise of its reasonable administrative discretion to continue the Contract, or (ii) City abolishes the program for which benefit this Contract was executed.

- b. City shall provide Contractor with thirty days' written notice if City terminates the Contract under this section. In determining the availability of funds, City may use the annual budget adopted for it by its City Council.

9. Termination.

a. For Convenience.

- i. **Mutual Consent.** The Parties may terminate the Contract at any time by mutual written consent.
- ii. **City.** City may, at its sole discretion, terminate the Contract, in whole or in part, upon thirty days' written notice to Contractor.
- b. **For Cause by City.** City may terminate the Contract, in whole or in part, immediately upon notice to Contractor, or at a later date as City may establish in its notice to Contractor, upon occurrence of any of the following events:

- i. City fails to receive funding, appropriations, limitations, or other expenditure authority at levels sufficient to pay Contractor for the Work, as further described in Section 8.
- ii. Federal or state laws, regulations, or guidelines are modified or interpreted in a way that the Work under the Contract is prohibited, or City is prohibited from paying for the Work from the planned funding source.
- iii. Contractor no longer holds a license or certificate that is required to perform the Work.
- iv. Contractor materially breached a covenant.
- v. Any representation or warranty made by Contractor in Section 6 is false or misleading in any material respect when made or when deemed made or repeated if the breach is not cured within thirty days after receipt of written notice from City.
- vi. The insolvency, liquidation, or bankruptcy of a Party.
- vii. The death, physical incapacity, or inability of any of Contractor's key personnel to perform the Work as provided under Section 7(d).
- viii. As used in Section 9(b)(iv), "materially breached a covenant" means a:
 - A. failure to perform the Work under the Contract within the time specified in the Contract or within the timeframe of any extension agreed to by City;
 - B. failure to pursue the Work so as to endanger Contractor's performance under the Contract in accordance with its terms, and the failure is not cured within ten business days after the date City delivers the notice, or within a longer period City may specify in the notice;
 - C. failure to provide or maintain in full force and effect any required insurance, if that failure is not cured within seven days after receipt of written notice from City;
 - D. failure to perform any other material covenant or obligation set forth in this Contract if that failure is not cured within thirty days after receipt of written notice from City.

- c. **For Cause by Contractor.** Contractor may terminate the Contract if Contractor provides thirty days' written notice to City that City failed to pay Contractor pursuant to the terms of the Contract and City failed to cure within thirty business days after receiving Contractor's notice, or within a longer period of cure as Contractor may specify in its notice to City.
- d. **Remedies.**
 - i. In the event of termination pursuant to Section 9(a)(i), 9(a)(ii), 9(b)(ii), 9(b)(vii), or 9(c) of the Contract, Contractor's sole remedy shall be a claim for the total sum provided in Section 4 multiplied by the percentage of Work completed and accepted by City, less previous amounts paid and any claim which City has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to City upon demand.
 - ii. In the event of termination pursuant to Section 9(b)(iii), 9(b)(iv), 9(b)(v), or 9(b)(vi), City shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor is not in default under Section 9(b)(iii), 9(b)(iv), 9(b)(v), or 9(b)(vi), then the rights and obligations of the Parties shall be the same as if the Contract were terminated pursuant to Section 9(a)(ii) of the Contract.
- e. **Contractor's Tender upon Termination.** If Contractor receives a notice of termination of the Contract, Contractor shall immediately cease all Work unless City expressly directs otherwise in its notice of termination. Upon termination, Contractor shall deliver to City all documents, information, works-in-progress, and other property that are or would be deliverables had the Contract been completed. Upon City's request, Contractor shall promptly surrender all documents, research, objects or other tangible things needed to complete the Work to a designated City representative.

10. Force Majeure.

- a. **Force Majeure Event.** Neither Party shall be held responsible for delay or default caused by war, insurrection, acts of terrorism, strikes, lockouts, labor disputes, riots, terrorist acts or other acts of political sabotage, volcanoes, floods, earthquakes, fires, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priorities, severe weather, or any other uncontrollable or unforeseeable act or circumstance beyond a Party's reasonable control and without fault or negligence of the Party ("Force Majeure Event").
- b. **Reasonable Efforts to Remove or Eliminate Force Majeure Event.** A Party affected by the Force Majeure Event shall make all reasonable efforts to remove or eliminate the cause of the Force Majeure Event and shall diligently pursue performance of its obligations under the Contract after the Force Majeure Event ceases.
- c. **Written Notice; Effect of Delay.** If there is a delay as a result of a Force Majeure Event, the Party delayed shall give written notice of the delay and the reason of the delay to the non-delayed Party within thirty days after the Party delayed learns of the Force Majeure Event. The Party delayed may request an extension of time up to the length of time of the delay due to a Force Majeure Event. Contractor shall not be entitled to additional compensation for delays that occur under this subsection.

11. Amendment.

- a. **Amendment to be in Writing; Definition.** The Parties may not amend the Contract unless the amendment is first reduced to writing and signed by the Parties. An "amendment" is a written document, contemporaneously executed by City and Contractor, which increases or decreases the cost to City, or changes or modifies the Statement of Services or Delivery

Schedule. Any amendment is effective only in the specific instance and for the specific purpose identified in the amendment.

- b. **Request for Amendment.** In the event Contractor receives any communication whatsoever from City that Contractor contends gives rise to an amendment of the Contract, Contractor shall, within fifteen days after receipt, make a written request for an amendment to City. If Contractor fails to submit its written request for an amendment within fifteen calendar days, City may refuse to treat the communication as an amendment.
- c. **Documentation of Costs; Exclusion.** Contractor shall submit a complete breakdown of labor, material, equipment, and other costs together with any request for an amendment to the Contract that affects the price. If Contractor incurs additional costs or devotes additional time on project tasks that were reasonably expected to be a part of the Contract or any mutually-approved amendments, then City shall only be responsible for payment of the costs it has agreed to pay.

12. Access to Records.

- a. Contractor shall maintain all books, documents, papers, and records relating to the Contract in accordance with generally accepted accounting principles.
- b. Contractor shall maintain any other records pertinent to the Contract in a manner that clearly documents Contractor's performance.
- c. City, state, and federal governments, and their duly authorized representatives, shall have access to Contractor's books, documents, papers, plans, writings, and records directly pertinent to the Contract to perform examinations, audits, and make excerpts and transcripts.
- d. Contractor shall retain and keep accessible all fiscal records, books, documents, papers, plans, and writings related to the Contract, for the later of (i) a minimum of three years from the date the Contract expires; (ii) the minimum period required by applicable law, following final payment and termination of the Contract; or (iii) the conclusion of any audit, controversy, or litigation arising out of or relating to the Contract.

13. Compliance with Laws.

- a. **Applicable Laws.** Contractor shall comply with all federal, state, and local laws, ordinances, rules, regulations, and executive orders applicable to the Work to be performed under the Contract. Contractor's failure or neglect to comply with all applicable laws, ordinances, rules, or regulations shall not relieve Contractor of these obligations or the requirements of the Contract.
- b. **Tax Laws.** During the Term of the Contract, Contractor shall comply with all state and local tax laws, including, but not limited to, ORS 305.620 and ORS chapters 316, 317, and 318.
- c. **Anti-Discrimination Laws.** Contractor shall comply with all federal, state, and local civil rights and rehabilitation laws prohibiting discrimination based on race, color, sex, national origin, religion, age or disability,
- d. **Specific Public Contracting Laws.** Contractor shall comply with all applicable provisions of ORS 279A, 279B, and 279C relating to public contracts. ORS 279B.220; ORS 279B.225, when applicable; ORS 279B.230; and ORS 279B.235 are incorporated into the Contract by this reference and made binding on City and Contractor.
- e. **Oregon Consumer Identity Theft Protection Act.** Contractor shall safeguard consumer personal information pursuant to ORS 646.600 to 646A.628, the Oregon Consumer Identity Theft Protection Act.

- f. **Laws or Regulations of Federal or State Grants.** The Parties shall comply with any state or federal law or regulation specific to any funding source that supports this Contract.
- g. **City Business License.**
 - i. Contractor shall obtain a City of Beaverton business license as required by Beaverton Code (BC) Chapter 7.01 before beginning the Work under the Contract.
 - ii. Contractor shall provide the business license number in the space provided on the signature page of the Contract.
 - iii. Contractor shall pay all fees due under BC Chapter 7.01 during the Term of the Contract.
 - iv. City may withhold payments due under the Contract to satisfy the amount due for a business license.

14. Compliance with Applicable City Policies and Practices.

- a. **Branding Manual Requirements.** If Contractor's Work includes any public-engagement materials or any end product that is a public-facing document:
 - i. Contractor shall comply with City's branding manual requirements in effect at the time the Contract is executed;
 - ii. City shall provide Contractor with the latest version of City's branding manual before Contractor begins Work on the Contract.
 - iii. As used in this subsection:
 - A. "Public-engagement materials" includes, but is not limited to, flyers, postcards, posters, and handouts.
 - B. "Public-facing document" includes any document that City intends to distribute to the public for the public to read and understand.
- b. **Language Access Policy.** Contractor shall comply with City's language access policy in effect at the time the Contract is executed. A copy of the language access policy may be obtained by contacting an employee of the Cultural Inclusion Division.

15. Independent Contractor.

- a. Contractor is engaged as an Independent Contractor and has no authority to bind City. Contractor is not an officer, employee, or agent of City as those terms are used in the Oregon Tort Claims Act, ORS 30.260 to 30.300, or for any purpose.
- b. **Solely Responsible for Acts.** Contractor shall be solely responsible for its acts and for the acts of its agents or employees during the performance of the Contract.
- c. **No Benefits.** Neither Contractor nor any of Contractor's agents or employees is entitled to any of the benefits that City provides its employees. As used in this subsection, "benefits" includes, but is not limited to, social security, workers' compensation, and unemployment insurance benefits.
- d. **Responsibility for Federal or State Taxes.** Contractor shall be responsible for all federal or state taxes applicable to compensation or payments made to Contractor under the Contract. Unless Contractor is subject to backup withholding, City will not withhold any amount of compensation or payment to cover Contractor's federal or state tax obligations.

16. Ownership of Work Product.

- a. **Independent Contractor; Work Made for Hire.** Contractor is an independent contractor for purposes of determining whether Contractor's work product is "work made for hire" under the US Copyright Act, 17 U.S.C. §§ 101-810. If Contractor's Work meets the definition of a work made for hire by an independent contractor, then the Work shall be considered a work made for hire and City shall be deemed the Work's author. If Contractor's Work does not meet the definition of work made for hire by an independent contractor, then Contractor irrevocably assigns and transfers to City all right, title, and interest in such work product, whether arising from copyright, patent, trademark, trade secret, or other state or federal intellectual property law or doctrine.
- b. **Waiver and Release; Usage.**
 - i. **Waiver and Release.** Contractor waives and releases all rights relating to the use of the Work completed pursuant to Section 2 of this Contract, including any rights arising under 17 U.S.C. § 106A. Reuse of work product by City or others for purposes outside the scope of the Contract shall be without liability to Contractor.
 - ii. **Usage.** If Contractor is an architect providing professional architectural services, then any plans, drawings, and other work product produced within the scope of the Contract are the property of Contractor. By executing the Contract, Contractor grants City an exclusive and irrevocable license to use that work product.

17. Indemnity.

- a. With regard to Contractor's performance in connection with or incidental to the Work, but excluding its performance of professional services and the indemnification and hold harmless aspects set forth in subsection (b) of this section, Contractor releases and shall indemnify, defend, and hold harmless City, City's officials, employees, agents, and volunteers from and against any and all claims, costs, damages, lawsuits, penalties, liens, losses and/or liabilities of any kind or nature, including all expenses of investigating and defending against same, including reasonable attorneys' fees and costs at trial and on appeal, that arise from or are connected to or are directly or indirectly caused or claimed to be caused in whole or in part by the fault or negligent, reckless, or willful acts or omissions of Contractor or Contractor's agents, employees, or subcontractors in performing Work required by the Contract. However, Contractor's duty to release, indemnify, and hold harmless as required by this subsection shall not include any liability arising from the established sole negligence or willful misconduct of City, City's officials, employees, agents, or volunteers.
- b. With regard to Contractor's performance of professional services, Contractor releases and shall indemnify, defend, and hold harmless City, City's officials, employees, agents, and volunteers from and against all claims, costs, damages, lawsuits, penalties, liens, losses, and/or liabilities of any kind or nature, including all expenses of investigating and defending against same, including reasonable attorneys' fees and costs at trial and on appeal, arising from the willful misconduct or negligent acts, errors, or omissions of Contractor or Contractor's agents, employees, or subcontractors associated with the Work.

18. Insurance.

- a. **Minimum Requirements.** Contractor, at Contractor's own expense, shall procure and keep in full force and effect the types and coverage amounts of insurance conforming to the minimum requirements required by City, which is attached as Exhibit 1 and incorporated into the Contract by this reference.

b. **Insurance Certification.**

i. **Certificates of Insurance.**

- A. Before Contractor begins Work under the Contract, Contractor shall furnish City with acceptable certificates evidencing the types, amounts, and issuers of insurance coverage meeting the minimum requirements set forth in the Contract.
- B. If a certificate of insurance is unavailable from a particular insurer, then Contractor shall provide City with alternative proof of insurance coverage acceptable to City.
- C. The certificates of insurance shall specify all parties who are Additional Insureds.

ii. **Renewal Certificates.** Contractor shall furnish renewal certificates of insurance at least fifteen days before the policy expires.

iii. **Deductibles or Self-Insured Retentions.** Contractor shall ensure that any deductibles or self-insured retentions is stated on the certificate of insurance.

c. **Other Insurance Requirements.** In all instances concerning the forms of insurance required under the Contract:

i. **Authorized Insurance Business.** The insurance shall be issued by a company authorized to do insurance business in the State of Oregon or by a non-admitted insurer subject to ORS 735.400 to 735.495, the Oregon Surplus Lines Law.

ii. **Complete Copies of Policies upon Request.** Contractor shall provide City with complete copies of insurance policies or insurance trust agreements upon request.

iii. **Deductibles, Self-Insurance Deductibles or Amounts.** Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and self-insurance amounts.

iv. **Umbrella or Excess Liability Insurance.** Umbrella or Excess Liability Insurance may be used to achieve the minimum liability limits, so long as policy is endorsed to state it is "As Broad as Primary Policy." If Umbrella or Excess Liability policy is evidenced to comply with minimum limits, a copy of the Underlying Schedule from the Umbrella or Excess Liability Insurance policy may be required.

v. **Notice of Intent to Cancel, Terminate, or Make Material Change to Insurance.** Contractor shall provide City with not less than thirty days' written notice of Contractor's intent to cancel, terminate, or make material change affecting required insurance coverage.

vi. **Renewal or Replacement Insurance.** Until the insurance is no longer required by City, Contractor shall provide City with evidence of renewal or replacement insurance at least fifteen days before the required insurance expires or is replaced. If at any time during the period when insurance is required by the Contract, an insurer fails to comply with the insurance requirements of the Contract, and Contractor has knowledge of the insurer's failure, Contractor shall:

A. promptly notify City, and

B. immediately replace the insurance with an insurer meeting the same minimum requirements required by the Contract.

vii. **Minimum Insurance Rating.** Except for professional liability insurance, the insurance shall be provided by a carrier with A.M. Best's Rating of A- or better and

Financial Performance Rating of 7 or better. Contractor's professional liability insurance policy shall be written by an insurer satisfactory to City and may be written on a claims made basis, provided Contractor, at Contractor's own expense, maintains the professional liability insurance in full force for not less than 24 months following completion of the Contract.

- viii. **Apply on Primary Basis.** The commercial general liability insurance and automobile insurance provided by Contractor and its subcontractors shall apply on a primary basis and be required to respond and pay prior to any other available coverage. Any commercial general liability insurance maintained by City shall be excess of and shall not contribute with the commercial general liability insurance provided by Contractor and its subcontractors.
- ix. **Right to Change Minimum Insurance Requirements.** City reserves the right to review the types of coverages and limits of insurance required by the Contract from time to time. If City changes its insurance requirements after this Contract is signed, City will provide notice to Contractor of its new requirements. Contractor shall promptly modify its coverage to comply with the new requirements and provide City with updated evidence of coverage. Contractor shall be entitled to an adjustment in the Contract price for any increase in premium resulting from such changes, provided Contractor can establish with reasonable certainty that the increased premium was due to changes required by City. Premium savings from any changes shall be refunded to City.

19. Limitation of Liabilities. Neither Party shall be liable in contract, tort, strict liability, warranty or otherwise for (a) any special, indirect, incidental, consequential, or non-economic damages resulting from or in any way related to the Contract, such as, but not limited to, delay, disruption, loss of product, cost of capital, loss of anticipated profits or revenue, or loss of use of equipment or system; or (b) any damages of any sort whatsoever arising solely from the termination of the Contract in accordance with its terms; provided, however, the provisions of this section do not apply to liability arising under or relating to Section 6 (Representations and Warranties) or Section 9(d)(ii) (Termination).

20. Assignment and Delegation.

- a. Except as provided in subsection (c) of this section, Contractor shall not assign, sell, subcontract, dispose of or transfer rights or delegate its duties under the Contract, either in whole or in part, without City's prior written consent.
- b. The rights under the Contract may not be assigned or transferred by operation of law, change of control, or merger without City's prior written consent.
- c. Money due to Contractor may be assigned if Contractor gives prior written notice of the assignment. However, any assignment of money shall be subject to all proper setoffs and withholdings in favor of City.
- d. City may rescind the Contract if:
 - i. An assignment is made without the prior written consent of City.
 - ii. The Contract is assigned or transferred by operation of law, change of control, or merger without City's prior written consent.
- e. In no instance shall City's consent to an assignment of rights or delegation of duties relieve Contractor of any obligations under the Contract. Any assignee, transferee, or subcontractor shall be considered the agent of Contractor and bound by all provisions of the Contract. Contractor, and its surety, if any, shall be liable to City for complete performance of the

Contract as if no such assignment, sale, subcontracting, disposal, transfer, or delegation had occurred, unless City otherwise agrees in writing. The provisions of the Contract shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns, if any.

21. Notice.

- a. **Requirement of a Writing; Permitted Methods of Delivery.** Unless expressly provided in the Contract, each Party giving or making any notice, request, demand, or other communication ("Notice") under the Contract shall:
- i. Give the notice in writing; and
 - ii. Use one of the following methods of delivery, each of which for purposes of this Contract is a writing:
 - A. Personal delivery, or
 - B. Mail.
- b. **Addressees and Addresses.** Each Party giving Notice shall address the Notice to the appropriate person of the receiving Party ("Addressee") at the address listed below, or to another Addressee or at another address designated by a Party in a Notice pursuant to this section.

For Contractor

(Fill in Contractor's Name, Representative's Name and Address)

For City

City of Beaverton
Attn: Nicole Walters, Mayor's Office
P.O. Box 4755
Beaverton, OR 97076-4755

With copy to:
City Attorney's Office
Attn: Grace Wong
P.O. Box 4755
Beaverton, OR 97076-4755

- c. **Effectiveness of Notice.** Except as provided elsewhere in the Contract, a Notice is effective only if the Party giving or making the Notice has complied with subsection (a) and (b) of this section and if Addressee has received the Notice. A Notice is deemed to have been received as follows:
- i. If the Notice is delivered in person, upon receipt as indicated by the date on the signed receipt.
 - ii. If the Notice is sent by mail, upon five days after mailing.

22. No Third-Party Beneficiaries. City and Contractor are the only parties to the Contract and are the only parties entitled to enforce its terms. Nothing in the Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, either directly, indirectly, or otherwise, to third parties unless such third parties are identified by name in the Contract and expressly described in the Contract as intended beneficiaries.

23. Conflict of Interest. Contractor represents that no employee of City, or any partnership or corporation in which a City employee has an interest, will or has received any remuneration of any description from Contractor, either directly or indirectly, in connection with the Contract, except as specifically declared in writing.

24. **Hazard Communication.** To the extent Contractor provides City with any goods that may otherwise release or otherwise result in exposure to a hazardous chemical under normal conditions of use ("Potentially Hazardous Goods"), Contractor shall provide City with a Material Safety Data Sheet on all Potentially Hazardous Goods, and shall label, tag, or mark all Potentially Hazardous Goods.
25. **Disclosure of Social Security Number.** Contractor shall provide Contractor's Social Security Number ("SSN"), unless Contractor provides an Employer Identification Number or other valid form of Taxpayer Identification Number ("TIN"). This information is requested pursuant to BPC 47-0770. SSN provided pursuant to this authority will be used for the administration of state, federal, and local tax laws. Contractor's TIN will be reported to the IRS under Contractor's name and submitted TIN. See IRS 1099 for more information. Information not matching IRS records may subject Contractor to backup withholding.
26. **Survival.** Expiration of the Contract shall not extinguish or prejudice City's right to enforce the Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured. All representations, indemnifications, warranties, and guarantees made, required by, or given by Contractor in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment to Contractor, completion of the Work and termination or completion of the Contract.
27. **Governing Law.** The Contract is entered into and is to be performed in Oregon and shall be governed by the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws, rules, or doctrines. Any claim, action, suit, or proceeding between City and Contractor arising out of or relating to the Contract shall be brought solely and exclusively in the Circuit Court of Washington County, Oregon. If the claim must be brought in a federal forum, then the claim shall be brought in the United States District Court for the District of Oregon. Contractor consents to *in personam* jurisdiction of the courts identified in this section.
28. **Captions.** The captions or headings in the Contract are for reference only and shall not affect the meaning or interpretation of the Contract.
29. **Counterparts.** The Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on the Parties, notwithstanding that the Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original. The exchange of signed copies of the Contract by electronic mail in Portable Document Format, or its equivalent, shall constitute effective execution and delivery of the Contract. Signatures on the pages sent through electronic mail shall be deemed to be their original signatures for all purposes.
30. **Waiver.** City's failure to enforce a provision of the Contract shall not constitute a continuing waiver, shall not constitute a relinquishment of City's right to performance in the future and shall not operate as a waiver of City's right to enforce any other provision of the Contract.
31. **Severability.** If any term or provision, or portions of any term or provision, is determined to be illegal, invalid, void, or unenforceable, the remaining terms and provisions of the Contract shall remain in full force if the essential terms and conditions of the Contract for each Party remain valid, binding, and enforceable.

32. **Merger.** This Contract, including any attached exhibits, constitutes the entire and integrated agreement between the Parties and supersedes all prior contracts, negotiations, representations or agreements, either written or oral. All prior and contemporaneous agreements between the Parties on the matters contained in the Contract are expressly merged and superseded by the Contract.

The Parties, by their signatures below, acknowledge having read and understood the Contract, and agree to be bound by its terms and conditions.

AGREED TO BY THE PARTIES:

CITY OF BEAVERTON

By: _____

Print Name: Denny Doyle

Title: Mayor

Date: _____

Approved as to legal sufficiency:

CONTRACTOR NAME

By: _____

Print Name: _____

Title: _____

Date: _____

City of Beaverton Business License No.: _____

MWSDV-ESB Certification No.: _____

Exhibit 1

MINIMUM INSURANCE REQUIREMENTS

WORKERS' COMPENSATION INSURANCE AND EMPLOYER LIABILITY INSURANCE

☒ Required ☐ Not Required

Contractor shall submit proof of Workers' Compensation for all persons who are "workers" as defined in ORS 656.005. A person who works under Contractor's direction and control or where Contractor has the right to control is a person for whom Contractor must show proof of coverage unless the "worker" is a "non-subject" worker exempt from workers' compensation insurance requirements under ORS 656.027. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work in Oregon, or show proof of extraterritorial coverage as per ORS 656.126. All contractors and subcontractors required to procure and maintain Workers' Compensation Insurance shall also procure and maintain Employer Liability Insurance with a combined single limit, or the equivalent, of not less than \$500,000 each employee per accident for bodily injury by accident or disease that is in full force and effect for the duration of Contractor or subcontractor's Work under the Contract.

Contractor shall require and ensure that each of its subcontractors who provide labor or services in connection with the Contract provide Oregon workers' compensation coverage for all their subject workers as required by ORS 656.017 and shall keep on file a certificate of insurance from each subcontractor and anyone else directly employed by either Contractor or subcontractor.

Contractor shall consult with its own insurance agent to determine if any person engaged by Contractor to perform any services under the Contract is a "subject worker" for whom Contractor must provide workers' compensation insurance. Contractor may declare itself exempt from this insurance requirement if it is not an "employer" who contracts to pay remuneration for and secures the right to direct and control the services of any person, as per ORS 656.006(13) to perform the services. A contractor who makes that declaration and who does not provide that insurance may be deemed a non-complying employer under Oregon law. A contractor who makes that declaration agrees to hold City harmless from and indemnify City against any claim for compensation benefits made against City by subject workers employed by Contractor to do any of the Work of the Contract. A contractor who declares itself exempt from providing Workers' Compensation Insurance coverage otherwise required by this Contract shall make that declaration in signed and dated writing to be attached to the Contract.

COMMERCIAL GENERAL LIABILITY INSURANCE

☒ Required ☐ Not Required

Contractor shall obtain and keep in full force commercial general liability insurance with a combined single limit, or the equivalent, of not less than ☒ \$2,000,000 or ☐ \$5,000,000 per occurrence, with a ☒ \$2,000,000; ☐ \$4,000,000; or ☐ \$10,000,000 annual aggregate limit, covering, but not limited to, liability for personal injury and property damage. Aggregate limits shall apply on a per project basis. The policy shall be written on an occurrence basis on ISO Form CG 00 01 (Commercial General Liability Coverage Form), or its equivalent, and shall include contractual liability covering the assumption of the tort liability (including defense costs) of another party by written contract for both ongoing operations and completed operations under the Contract. City of Beaverton and its officials, employees, agents, and volunteers shall be named as additional insureds under ISO Form CG 2010 (Additional Insureds – Owners, Lessees, or Contractors – Scheduled Person or Organization), or its equivalent, and CG 2037 (Additional Insured – Owners, Lessees, or Contractors – Completed Operations), or its equivalent, with respect to the Work to be provided under the Contract. The commercial general liability insurance coverage required by the Contract is with respect only to the Work described in the Contract, and has no relationship to, or bearing upon, other projects of the insured and is primary and non-contributory with any City insurance or self-insurance program.

AUTOMOBILE LIABILITY INSURANCE

☒ Required ☐ Not Required

Contractor shall obtain and keep in full force automobile liability insurance on ISO Form CA 00 01 (Business Auto Coverage), or its equivalent, with an each accident limit of not less than ☒ \$1,000,000 or ☐ \$2,000,000 covering, but not limited to, liability for bodily injury and property damage, for "any auto" including owned, non-owned, and hired autos used in connection with the performance of the Work. City of Beaverton and its officials, employees, agents, and volunteers shall be named as additional insureds Endorsement CA 20 48

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Updated 12/20/2016

(Designated Insured), or its equivalent. The automobile liability insurance required by the Contract is primary to and non-contributory with any City insurance or self-insurance program. Any deductible for this insurance shall not exceed \$5,000. If Contractor is declaring Contractor excused from any requirement to provide automobile liability insurance coverage because Contractor does not use an automobile in connection with Work under the Contract, Contractor may initial here: _____; otherwise, Contractor shall obtain and keep the required insurance.

PROFESSIONAL LIABILITY INSURANCE

☐ Required ☒ Not Required

Contractor shall obtain and keep in full force professional liability insurance with a combined single limit, or the equivalent, of not less than ☒ \$2,000,000 or ☐ \$5,000,000 per claim, with a ☒ \$2,000,000; ☐ \$5,000,000 annual aggregate limit, covering, but not limited to, liability for bodily injury, property damage, and economic loss. Contractor, at Contractor's own expense, shall maintain professional liability insurance in full force for not less than 24 months following completion of the Contract. The professional liability insurance coverage required by the Contract is with respect only to the Work described in the Contract, and has no relationship to, or bearing upon, other projects of the insured. Coverage must be in effect prior to the commencement of the performance of the Contract. Contractor shall furnish continuous "claims-made" liability coverage for 24 months following completion of the Contract. Certificate of "tail" coverage for 24 months following the completion of the Contract in lieu of continuous "claims made" liability coverage is acceptable if "claims made" policy expires or is cancelled following completion of the Contract.

If Contractor proposes using subcontractors, in addition to any other requirements of the Contract, City may require subcontractors to provide professional liability insurance of similar type and coverage amount. Contractor, at Contractor's own expense, shall maintain professional liability insurance of similar type and coverage amount.

CONSULTANT POLLUTION LIABILITY INSURANCE

☐ Required ☒ Not Required

Contractor's professional liability insurance shall be endorsed to provide liability coverage in an amount not less than ☐ \$2,000,000 or ☐ \$5,000,000 per claim limit, with a ☐ \$2,000,000; ☐ \$5,000,000 annual aggregate limit, covering, but not limited to, liability for bodily injury, property damage, and cleanup costs. In lieu of endorsement, City may accept equivalent coverage under a separate insurance policy.

COMMERCIAL CRIME INSURANCE

☐ Required ☒ Not Required

Contractor shall obtain and keep in full force commercial crime insurance not less than \$50,000, including, but not limited to, coverage for theft or loss of client property.

CONTRACTOR POLLUTION LIABILITY INSURANCE

☐ Required ☒ Not Required

Contractor's pollution liability insurance shall be in an amount not less than ☐ \$2,000,000 or ☐ \$5,000,000 per claim limit, with a ☐ \$2,000,000; ☐ \$5,000,000 annual aggregate limit, covering, but not limited to, liability for bodily injury, property damage, and cleanup costs.

WAIVER OF SUBROGATION

☐ Required ☒ Not Required

If Waiver of Subrogation is required, Contractor waives Contractor's right to recover from City, its officials, employees, agents, and volunteers for any damages arising out of Work performed under the Contract and covered by insurance. Any commercial general liability insurance policy and/or automobile liability insurance policy required under the Contract shall be endorsed to provide for a waiver of underwriter's rights to subrogation as to additional insureds.